

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHERMAN JOHNSON, JR.,

Defendant.

8:16CR241

ORDER

This matter is before the Court on defendant Sherman Johnson, Jr.’s (“Johnson”) motion to proceed in forma pauperis and for appointment of counsel on appeal and his request for transcript at no cost to him. (Filing No. 165). Johnson’s motion also includes attorney Michael Evans’s (“Evans”) request to withdraw as Johnson’s retained counsel. Johnson asserts he “is indigent and unable to pay the costs of attorney fees, docket fees and trial transcript for his appeal.” In support, Johnson has attached a financial affidavit (Filing No. 165-1), a copy of a Notice of Appeal he filed September 4, 2018 (Filing No. 165-2), and a Request for Transcript (Filing No. 165-3). Johnson’s motion will be granted in part and denied in part. Evans’s request will be denied.

Taking Johnson’s motion to proceed in forma pauperis first, the Court finds Johnson’s motion and supporting affidavit meet the requirements of 28 U.S.C. § 1915(a)(1) and Federal Rule of Appellate Procedure 24(a)(1). Therefore, Johnson will be allowed leave to proceed on appeal in forma pauperis.

The Court likewise grants Johnson’s request for a transcript at no cost to him. *See* 28 U.S.C. § 753(f). Johnson’s appeal is not frivolous and raises a substantial question. *See id.*

Johnson's request for appointed counsel on appeal and Evans's request to withdraw as attorney of record are denied without prejudice and may be reasserted at the Eighth Circuit Court of Appeals. *See* 8th Cir. R. 27B(a) ("Defendant's trial counsel, whether retained or appointed, shall represent the defendant on appeal, unless the Court of Appeals grants permission to withdraw."). Accordingly,

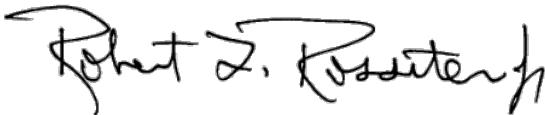
IT IS ORDERED:

1. Johnson's motion (Filing No. 165) is granted in part and denied in part.
2. Johnson's motion to proceed in forma pauperis on appeal and request for transcript at no cost to him are granted.
3. Johnson's motion for appointment of counsel is denied without prejudice.
4. Evans's request to withdraw as attorney of record is denied without prejudice.

IT IS SO ORDERED.

Dated this 6th day of September 2018.

BY THE COURT:



Robert F. Rossiter, Jr.
United States District Judge